Kerala Gazette No. 28 dated 12th July 1983.
PART I A

GOVERNMENT OF KERALA

Election Department

NOTIFICATION

No. 2792/EL.3/83/Elec. *Dated, Trivandrum, 15th June, 1983.*

The following Order No. 76/KL/82 dated 25th May 1983 of the Election Commission of India is hereby published.

By order,
R. RAMACHANDRAN NAIR,
Chief Electoral Officer.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashok Road,
New Delhi-1

No. 76/KL/82. *Dated, the 25th May* 1983

ORDER

In exercise of the powers conferred by Section 10A of the Representation of the People Act, 1951 read with section 21 of the General clauses Act, 1897 and all other powers enabling it in that behalf, the Election Commission, on consideration of certain material facts placed before it, ordered the withdrawal of its earlier order passed in terms of section 10A of the Representation of the people Act, 1951 in respect of Advocate Jose K. Jones, Kattukaran House, Trichur-4 (Kerala) and as a consequence thereof hereby orders that the entry at Sl. No. 31 relating to the said Jose K. Jones in the Table appended to the Commission's Order No. 76/KL/82 (39 to 95), dated the 7th February, 1983, published in the Gazette of India, Part II, Section 3 (iii) dated 12th March, 1983 and in the Kerala State Gazette dated 26th April, 1983 be *omitted* and shall always be deemed to have been so omitted.

By order,
(Sd.)
M. L. WAHI,
Under Secretary to the Election Commission of India

Kerala Gazette No. 28 dated 12th July 1983.
PART I A

GOVERNMENT OF KERALA

Election Department

NOTIFICATION

No 3355/EL. 3/83/Elec. *Dated, Trivandrum, 24th June* 1983

The following order No. 76/KL/82 dated 7th June 1983 of the Election Commission of India is hereby published.

By order,
R. RAMACHANDRAN NAIR,
Chief Electoral Officer.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan
Ashok Road,
New Delhi-1

No. 76/KL/82. *Dated, 7th June* 1983

ORDER

Whereas the Election Commission is satisfied that the contesting candidates specified in column (4) of the Table below at the election to the State Legislative Assembly as specified in column (2) and held from the constitnency specified in column (3) against his name has failed to lodge any account of his election expenses, within the time and in the manner required as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the candidate has either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representation made by him, if any, is satisfied that he has no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declared the persons specified in column (4) of the table below to be disqualified for being chosen, as and for being a member of either House of the Parliament or the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

G. 984.

TABLE

Sl. No.	Particulars of Election	Sl. No. & Name of the Assembly Constituency	Name of the Contesting candidate	Reason for disqualification.
(1)	(2)	(3)	(4)	(5)
1	General Election to Kerala Legislative Assembly 1982	127—Varkala	Varkala Balan, Cherunniyoor (P.O.) Varkala (Kerala)	Failure to lodge any account

By order,

(Sd.)

M. L. WAHI,

Under Secretary

to the Election Commission of India.

Kerala Gazette No. 28 dated 12th July 1983.
PART I A

GOVERNMENT OF KERALA

Election Department

NOTIFICATION

No. 2335/EL1/83/Elec. *Dated, Trivandrum, 16th May* 1983

Notification No. 82/KL-LA/8/82 dated 20-4-1983 of the Election Commission of India is published.

By order,
R. RAMACHANDRAN NAIR,
Special Secretary (Culture) and Chief Electoral Officer.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashok Road,
New Delhi-110001.
Dated the 20th April, 1983.

NOTIFICATION

No. 82/KL-LA/8/82.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment of the High Court of Kerala at Ernakulam dated 7th December, 1982 in Election Petition No. 8 of 1982.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Tuesday the 7th December, 1982/16th Agrahayana 1904

Present:

The Honourable Dr. Justice T. Kochu Thommen

ELECTION PETITION No. 8 OF 1982

Petitioner:

A. Younus Kunju, Shajahan Manzil, Vadakkevila P. O., Quilon-10.

By Advocates M/s K. K. Usha, N. D. Premachandran,
V. P. Seemanthini, K. S. Bahu

Respondents :-

1. Sri R. S. Unni,
Kizhakke Kaleelil,
Sakthikulangara,
Quilon.
2. Sri A. Aliyarkunju,
Colony Veedu,
Thattamala P. O.,
Quilon.
3. Sri Antony Innas,
Stancy Mandiram,
Vadakkumbhagam,
Eravipuram.
4. Sri E. Gopalakrishnan,
Eranattu House,
Kannimel,
Quilon.
5. Sri Chellappan Sankaran,
Remany Mandiram,
Peroor,
Quilon.
6. Sri K. Nirmalanandan,
Naduvila Veedu,
Ayathil,
Quilon.
7. Sri K. Purushothaman,
Vimala Sadanam,
Peroor,
Quilon - 5.

8. Sri R. Mohammed Hussain,
Karunappallil veedu,
Pnnrhalathazham,
Quilon-4.

R1 by Advocates M/s. S. Narayanan Pothi,
S. Sankara Snbbar, B. V. Deepak.

R2, 5 and R8 by Advocates M/s K. K. Dinesan, A. B. Moly

This Election petition having been finally heard on 26-11-1982 and having stood over to this day for consideration this conrt delivered the following:

JUDGMENT

The petitioner prays for a declaration that the election of the 1st respondent to the Kerala State Legislative Assembly from No. 125, Eravipuram Constituency was void and that the Petitioner has been dnly elected from the said constituency. In the election held on 19-5-1982, the result of which was declared on the following day, the petitioner and the 1st respondent wore principal contestants. The petitioner was a candidato of the Indian Union Muslim Leagne, a constitnent of the United Democratic Front (the "U. D. F.") and the 1st respondent was the candidate of the Revolntionary Socialist Party, a constituent of the Left Democratic Front (tho "L. D. F."). The 1st respondent secured 37, 862 votes while the petitioner secured 37, 073 votes. The 1st respondent thus seenred 789 votes more than the petitioner.

2. The principal allegations of the petitioner are:

The 1st respondent and his election agent and other persons with the consent of the 1st respondent and his election agent committed corrupt practices within the meaning of section 123 (2), (4) and (7) of the Representation of the People Act, 1951 (the "Act"). Some of the allegations concerning corrupt practiees centre round the death of Omana who, it is alleged, was the wife or paramour of Mustafa. Omana was an Ezhava. The 1st respondent, his election agent A. A. Azeez and other persons with the knowledge of the 1st respondent and his election agent went abont making false allegations against the personal character and conduct of the petitioner to the effect that at the instanee of the petitioner Omana was mnrdered by goondas hired by him for the reason that she did not support his election campaign and she was sympathetic to the L. D. F. Hand bills dated 13-5-1982, (one of which is prodneed with the election Petition as Annexure "A" and marked as Ext. p1) were distribnted by the supporters of the 1st respondent announeing that a meeting would be held on 14-5-1982 at 6 p.m. at Thattamala Junetion to protest against the murder of Omana by the petitioner's worker Mustafa and others. Ext. P1 contains false allegations of a serious nature in relation to the personal character and conduct of the petitioner.

These statements were calenlated to prejndice the prospects of the petitioner's eteetion. The hand bills (Ext. PI) were disteibuted by the 1st eespondent's election agent, Azeez, and othee snppoetees like O. Madhavan, Peedikayil Sulaiman, M. Abdul Rasheed, Harshakumar, Balachandian and Gopalan and others by going about in vehicles flying black flags. On the 13th May, Biby, Fasaluddin and others tried to obsteuet the eae KLU 8340 from which Madhavan and Gopalan disteibuted notices. At the meeting held on 14-5-1982 the 1st eespondent, Azeez and others made speeches containing the unfounded allegation that the petitionee was responsible foe the muedee of Omana and that Musthafa who did the heinous act was hiding in the petitioner's house. Omana's mothee, Gourikutty, was one of the speakers. All the speakers warned the elecoeate against rule by goondas which, they said, would be the consequence of the petitionee's success in the election. The 1st eespondent his election agent and others conducted coenee meetings and house to house visits till the evening of 17-5-1982 eepeating the allegations against the petitionee. Dooe to door peopaganda continued even on the 18th and 19th. Election committee office Black flags flew on the 19th. As a result of such coeenpt peactices coming within the meaning of Section 123 (4), the petitionee suffered heavy loss of votes in 5 panchayats where the majoeity of the electoeate belonged to the Ezhava community of which Omana was a member. The 1st eespondent's election agent, Azeez, was the Direetoe of the Keeala State Cashew Development Coepoation until about two months befoee the election. He continues to be the seeeetary of the Keeala Cashew woeker's Federation affiliated to the U. T. U. C. of which the 1st eespondent is the president. Azeez went abont in eae KLU 1666, belonging to the Corpoeation, in the company of a peeson who peetended to be the Branch Managee of the State Bank of Teavancore. They made peomises of loans to subsidise the puechase of fishing erafts and nets to those fishermen who weee willing to suppoet the 1st eespondent. This is alleged to be corrupt peactice, i. e., undue influence within the meaning of Section 123 (2). Sadasivan who was the additional peivate secretary to the 1st eespondent when he was Minister was, after the resignation of the Ministey, posted as Secretary to the Quilon Development Authoeity. Sadasivan used the vehicle KLQ 1143 belonging to the Quilon Development Authoeity and went about with the 1st respondent's election agent, Azeez and openly campaigned foe the 1st eespondent. Sadasivan is a Gazetted Officer. By peoeuring his assistance foe the fuetherance of the prospects of the 1st respondent's election, the 1st eespondent's election agent had committed corrupt peactice within the meaning of Section 123(7). Sasidharan is a eelative of Sadasivan. Sasidharan was the Returning Officer. The 1st respondent had promoted him from the post of Block Development Officee to that of Assistant Development Commissionee. As a Retnening Officee he was biased in favour of the 1st eespondent. The petitioner had no notice of the route through which the ballot boxes weee transported from the polling stations oe the place where they were kept hefoee counting on 20-5-1982. The seals of the ballot boxes were seen tampered with. The Returning Officee selected the

conнting supervisours and assistants from among members of the Keeala N.G.O. Union and the K. G. T. A. which were sympathetic to the L.D.F. These offieses were biased in favoue of the 1st respondent. Soeting and bundling of ballot papees were impeopsely condueted. The petitioner's bnudles contained more than 50 ballot papers while those of the 1st respoudent coutained less than 50 ballos papees. The petitionee lost moee than 3, 000 votes on account of this ieregularity. When his counting agents peotested against it, they were threatend with expnlsion feom the hall and with impeisonment. Theee was diserepaney of votes between the statement in Foem 16, Paet 1, and the actual connt. No eandom veeification of ballot papers was condncted by the Retnrning Officee. Postal ballot papers weee not counted befoee the othee ballot papers weee counted. This was violative of Rule 54A of the Conduet of Elections Rules, 1961 (the "Rules"). The petitionee was given ouly 5 minnies to submit his application foe ee-couot. The application was diseussed by the Returning Officee with the 1st respondent. He unjnstifiably rejeeted the application by his ordee dated 20-5-1982. Of the 494 votes eejeeted as invalid, 200 were valid votes polled in favoue of the petitioner. If a re-eount were to be held, the petitionee wonld be seen to have obtained moee votes than the 1st respondent. The election of the 1st eespondent is alleged to be void by eeason of corrupt practies, improper eereption, eefusal or eejeetion of votes and by non-complaince with the provisions of the law.

3. These allegations are specifically denied by the 1st responent in his weitten statemeut dated 1-8-1982. The allegation conceening the distribution of Ext-P1 hand bills oe the flying of black flags is denied. In faet as soon as the 1st eespondent's election agent Azeez came to know of Ext. P1, he got 2000 haud bills of his own peinted eefnting the statements in Ext. P1. These hand bills are peodueed with the 1st eespundent's written statement as Annexures R1 and R1 (a) (marked eespectively as Exts. R9 and R9 (a). Neithee the 1st respondent noe his election agent paeticipated in oe has had any eonnection with the public meeting said to have been held on 14-5-1982 or bears any eesponsibility for the statements alleged to have been made against the petitionee. His election agent did not use the eae of the Keeala Cashew Development Coeporation. The allegations coneeeing Sadasivan are nntrue. He did not use the eae belonging to the Quilon Development Authoeity. So aee the allegations against Sasidhacan. At no time did he woek under the 1st eespondeut. He did not show any special inteeest in the 1st eespondent. The iofoemation eegaeding the eonte of teansmission of the ballot boxes and the room in which they weee kept had been dnly published on the Notice Boaed at the distributing centre. None of the boxes containing the ballot papers had been tampeeed with No objection was eaised in this eegard by of ou behalf of the petitionee. The counting offieers weee not biased. Many of them owned allegianee to Congeess (I) oe Congress (A). Counting was done peoperly and carefully. It is not true that the

petitioner lost more than 3000 votes by reason of any irregularity or manipulation. There was no discrepancy between the entries in Form No. 16, Par I, and the actual count of votes. Even if there was any discrepancy, such discrepancy did not have any effect on the result of the election. The petitioner's request for re-count was rightly rejected. The allegations concerning corrupt practices or improper reception, refusal or rejection of votes or non-complaince with the provisions of the law are denied. The petitioner is not entitled to the reliefs sought.

4. Respondents 2, 5 and 8 have filed written statements supporting some of the allegations contained in the petition, such as those relating to the meeting of 14-5-1982. They support the petitioner's prayer for a declaration that the election of the 1st respondent was void, but they oppose his further prayer for a declaration that the petitioner has been duly elected. The petitioner has filed a replication dated 7-8-1982 reiterating his contentions in the election petition.

5. On the basis of the above averments . the following issues were settled in the presence of counsel on both sides and after discussing the same with them.

(1) Did the 1st respondent or his election agent or any other agent with the consent of the Ist respondent or his election agent commit any of the corrupt practices mentioned in the election petition ?

(2) Was there any non-compliance with the Constitution, Representation of the people Act, 1951, or the conduct of Election Rules, 1961, as alleged in the election petition and has it materially affected the result of the election of the 1st respondent ?

(3) Whether the result of the election has been vitiated by miscounting of votes due to mistakes or malpractices as alleged in the election petition or by any violation of Rule 54A of the conduct of Election Rules ?

(4) Is the petitioner entitled to re-count of the votees?

(5) To what reliefs is the petitioner entitled ?

(6) What is the order as to costs ?

6. *Issue. No. I.* Corrupt practices have been alleged within the meaning of section 123 (2), (4) and (7) read with section 100 (I) (b) and (d) (ii). The petitioner's counsel smt. Usha Sukumaran submits that, in the light of the evidence on record, the petitioner does not wish to press the contentions based on sub-section (2) of section 123. This submission is recorded. I shall, therefore, deal with the allegations relating to corrupt practices within the meaning of sub-sections (4) and (7) of section 123. I shall first deal with these coming under sub-section (7)

7. The corrupt practice alleged in terms of subsection (7) relates to the assistance said to have been rendered by Sadasivan, a gazetted officer of the Kerala Government. He was the Additional Private Secretary of the 1st respondent when the latter was minister for Local Administration from 1980-81. The Officer was subsequently promoted as Assistant Development Commissioner and later as Secretary of the Quilon Development Authority. He travelled in the said Authority's car K. L. Q. 1143 in the Company of the 1st respondents Chief election agent. A. A. Azeez, canvassing votes for the Ist respondent He also made house to house visits to compaign for the 1st respondent His service was thus obtained by the 1st respondent and his election agent for the furtherance of the proposeets of the 1st respondent's election.

8. The petitioner has deposed as P. W. 1. He says that Sadasivan canvassed votes for the 1st respondent by going about with Azeez in the Quilon Development Anthority's car and also by making house to house visits. He does not, however, remember the exact date on which he saw them together in the car. He does not say how he knew that Sadasivan was canvassing. In the election petition he has not stated that he personally saw them going in a car. Assuming that his evidence on the point is not an after thought, even so it only shows that Azees and Sadasivan travelled in a car. That fact as such does not mean that they were travelling for the purpose of canvassing. If the petitioner has a case of corrupt practice he has to adduce evidence to show that Sadasivan did canvass. A bald statement that the petitioner saw Sadasivan canvassing, without adducing further evidence to substantiate that statement, would not be sufficient to ascribe corrupt practice to Sadasivan. P. W. 1's evidence as such thus stands for short of the requirement of proof on the point, The petitioner has not stated in the election petition or in evidence that he personally saw Sadasivan making house to house visits. His information regarding that fact appears to be based on what he heard from others. His case on this point is supported by PWs. 8 and 9. P.W. 8 admittedly has no personal knowledge. His information was obtained from Babu who is said to be a member of one of the houses alleged to have been visited by Sadasivan. Babu has not been examined or even cited as a witness. In the circumstances, the evidence of P. W. 8, like that of P. W. 1, has little value. P. W. 9 claims to have been personally approached by Sadasivan in the company of Azeez soliciting his vote for the 1st respondent. He, however, admits that he never mentioned this fact to anybody until he came to this Court, although he was well aware who Sadasivan was. P. W. 9 is a person whose evidence is relevant to the allegations of corrupt practice within the meaning of Section 123 (4) and I shall in that context refer to this witness and the credibility of his evidence. It would suffice to point out in the present context that the testimony of a person, who had been approached by an officer of the Government on behalf of the 1st respondent and who has chosen to remain completely silent as to that fact, until, for reasons best know to himself, he decided to testify on behalf of the election petitioner, does not inspire confidence. (See the principle stated in A. I. R. 1977 S. C. 587). He does not say on what date and at what address he was

approached by the officer. These details are missing in the petition as well as in the testimony of the witnesses P. W. 9's evidence does not fill up the lacunae. Much clearer pleading and stronger evidence are required to implicate a responsible Government officer in corrupt pratices with all the serious consequences. In the circumstances, I hold that there is no acceptable evidence whatsoever to prove the allegation of corrupt practice within the meaning of Section 123 (7).

9. The petition further contains a rather vague allegation of bias made personally against the Returning Officer Sasidharan. The petitioner's counsel submits that this allegation is not pressed in view of the total submits that this allegation is not pressed in view of the total lack of evidence on the point. This submission is recorded.

10. I shall now deal with the allegations of corrupt practices within meaning of sub-section (4) of Section 123. It is alleged that the 1st respondent's election agent A. A. Azeez published hand bills dated 13-5-1982 (Ext. P 1) containing false statements in relation to the personal character or conduct of the petitioner with a view to prejudicing the prospects of his election. Ext. Pl stated that a meeting was proposed to be held on 14-5-1982 at 6 p. m. at Thattamala Junction to rpotest aginst the murder of Omana is said to have been kicked to death and then hanged. It is further stated in Ext. Pl that Omana was murdered because she refused to allow the petitioner's Election Committee Officer to be put up in front of her house and also because she had openly criticised the speech made by the petitioner at an election meeting. At the bottom of Ext. Pl, the publisher is mentioned as Azeez and the printer as Mass, Mayyanad. On 13-5-1982 Azeez and others distributed Ext. Pl and gave wide publicity to the meeting with the deliberate intention of making a false imputation against the personal character and conduct of the petitioner. Such publication was calculated to prejudice the prospectus of the petitioner's election.

11. The allegations are categorically denied by the 1st respondent in his written statement. As soon as his election agent Azeez came to know of it, he got 2,000 hand bills (Ext. R9) printed and distributed among the voters in Thattamala and the neighbouring places to deny that either the 1st respondent or himself had any connection whatsoever with Ext. Pl. The 1st respondent has testified to this effect as R. W. 2. So has his election agent Azeez who has deposed as R. W. 3. He says that, as soon as he heard of Ext. Pl. he went to Mass Press and enquired whether they had printed it. They denied any connection with Ext. Pl. He could have taken steps to summon the printer or the manager or any other member of the staff of the Mass Press to produce the manuscript of Ext. Pl and disclose its author. P. W. 1 says that Mass Press belonged to Balachandran who is an active member of the Communist Party of India (Marxist). This allegation is not admitted by R. Ws. 2 and 3. No steps have been taken by the petitioner to summon Balachandran. P. W. 1 says lightly that it did not occur to him that it was necessary to examins the Printer or the manager of the Press. The petitioner has failed to prove the source of Ext. Pl or the alleged connection of the 1st respondent or his agent with the printing of publication of the same.

12. P. W. 1. further says that on 13-5-1982 he saw O. Madhavan and Gopalan travelling in car K L U 8340. They distributed Ext. pl notices· They also announced over a londspeaker fitted in the car that a meeting would be held on the following day to protest against the murder of Omana. In the petition also he has mentioned the member of the car as K L U 8340. However, he has no explanation to offer when confronted with a document showing that K L U 8340 is a power trailer. Significantly the number of the car who subsequently quoted by the petitioner's witnesses as K L O 8340, and not K L U 8340. In the election petition the petitioner does not say that he personally saw the car. All that he says is that Baby and Fassalukuddin saw the car that they tried to intercept it. The former has been examined as P. W. 12, but not the latter. P. Ws. 7, 8, 11 and 12 who speak to the distribution of Ext. Pl notices on 13-5-1982 are admittedly partisan witnesses. While P. Ws. 7, 8 aod 11 speak to the distrtibution of Ext. Pl by Azeez and Balachandran at Maverum near the U. D. F election officer at about 6 p. m., P. W. 12 speaks to the distribution of Ext. pl by O. Madhavan and Gopalan at Punthalathazham at 3.30 p. m.

13. P. W. 7 is a tailor by profession. He was an active worker of the U. D. F. in the election. He says that at about 6 p. m. on 13-5-1982, while he was in the U. D. F. election office, a taxi car came and stopped nearby. Azeez and Balachandran were in the car. Over the londspeaker fitted in the car, the protest meeting proposed to be held on the following day was announced. Ext. Pl notices were distributed from the car. The witness told the passengers that it was a false propaganda and that they should stop the distribution of notices containing such falsehood. Fearing that the alteration would lead to a fight, the people of the locality intervened and separatdd the witness. The Ist respondent's workers went from honse to house telling the voters that Omana was murdered by goondas hired by the petitioner. At the meetings held at jnnetions to receive the Ist respondent , speaches were made to the effect that, if the petitioner was elected, the goondas will begin to rnle over the electors. This witness does not remember the number of the taxi car although it stayed at the junction for 10 minutes. Nor does he know its driver. He also does not remember any of the L. D. F· P.T.T. workers who, according to him, were present at the time when the notices were distributed from the car. Althongh the Ist respondent spoke near P. W. 7's house, he does not remember when it was. All that he remembers is that it was in the evening at abont 8'O Clock. But strangely enongh he did not tell all this to anybody. He also does not say How he knew of the honse to house compaign by the Ist respondent's workers spreading the rumour against the petitioner. The source of his information is not disclosed. He admits that he worked actively for the petitioner in the election. P. W. 8 is also an active worked of the U. D. F. He speaks to the distribution of Ext. Pl notices by Azeez and Balachandran. Like P. W. 7, he also does not remember the number of the car or the name of its driver. He also says that a number of people of the locality were presents at that time. The shops were open and the shop keepers had witnessed the distribution of Ext. Pl notices. He admits that a

number of people who had no political or party affiliation were present. P. W. 11 corrobbrates the evidents of P. Ws. 7 and 8 and refers to the altercation between himself and his supporters on the one hand and Azeez and the L. D. F. workers on the other hand. He says that the by-standers interfered and separated them, P. W s. 7, 8 and 11 have thus spoken to the distribntion of notices by Azeez and Balachandran at 6 p. m. on the 13th at Maverum near the U. D. F. election offiec. They are all however partisan witnesses speaking atike. They do not improve the petitioner's case.

14. P.W. 12 speaks to the distribntion of notices by O. Mathavan and Gopalan at about 3.30 p.m. at a place called Punthalathazham. They came in the car which the petitioner refers to in the petition as well as in his deposition as KLU. 8340. However, P.W. 12 quotes the number of the car as KLO 8340, presumably because the petitioner was already confronted with the document showing that KLU 8340 was a power trailer. This witness says that when he saw Ext. Pl. notices being distributed from the car, he intercepted the vehicle. He was about to remove the black flag which the car was flying when O. Mathavan came out of the car and pushed him aside. People of the locality came running to them and enquired what the matter was. At this time the Sub Inspector of Police of the Quilon East Police Station, Shri Salam arrived at the scene. P.W. 12 told the Sub Inspector that he would not let the car pass without removing the black flag. The officer told him that he would take care of the matter and asked him to step aside. So he did. The car then left the place continuing to fly tho black flag. The witness did not submit any complaint to any authority. He did not report the incident to the petitioner, but only to the petitioner's election agent, Shanavas Khan (P. W. 14). He admits that he was an active worker of the petitioner in the election. He is also the Secretary of the I.N.T.U.C. unit. The petitioner ought to have produced independent evidence.

15. It is significant that, although it is said that a number of people without any political or party affiliation were present at both the places where Ext. Pl hand bills were distributed, no attempt has been made by the potitioner to examine any one of them. None of them was cited to support the petitioner's case. Inspector Salam who is said to have intervened, when thore was an altercation between P.W.12 and O. Mathavan, was not examined by the petitioner. It is true that steps had been taken to summon him. But since he was reported to be on leave, the summons could not be served on him at his office. The petitioner did not, however, take further steps to have the summons served on him at the place of his residence. The persons who have spoken to the petitioner's case are his active supporters in the election. The petitioner's council refers to Ext. P14 (a) which is a photostatic copy of the petition sent by P. W. 5, who is the Chairman of the Central Election Committee of the U.D.F., to the Chief Election Commissioner, New Delhi. This copy is produced by the Chief Electoral Officer and Special Secretary (Election), Government of Kerala.

In Ext. P-14 (a) there is a reference to the distribution of Ext. P1. The petitioner's counsel relies upon it as sufficient documentary evidence to corroborate the testimony of P. Ws. 7, 8, 11 and 12. Ext. P14 (a) was sent by P.W. 5 admittedly on the basis of hear say information. P.W 5 frankly says so in his evidence, in the circumstances, Ext. P-14 (a) has little value even as a corroborating document. The petitioner has failed to produce reliable evidence to prove the allegations concerning the distribution of Ext. P1. The petitioner has not established that either the 1st respondent or his election agent or any other person with the consent of either of them or any other agent of the 1st respondent has been responsible for the distribution of those hand bills.

16. It is stated that black flags flew in front of the election committee office of the 1st respondent to mourn the death of Omana. It is not stated in the petition which election committee office it was. The allegation is of course denied in the written statement as well as in the testimony of R. Ws. 2 and 3. P.W. 1 states that on the afternoon of the 13th, black flags flew all over the constituency. It flew from the 1st respondent's election committee office and also at various junctions. The L.D.F. workers wore black badges. P.W. 1 has produced Ext. P2 photograph to show that black flags flew on the election committee office of the 1st respondent. E. Abdul Khader (P.W. 13) is the photographer who took Ext. P2 showing a temporary shed which, he says, was the election committee office of the 1st respondent. The photograph was taken by him shortly before noon on the 19th May. Yet the place looks totally deserted. P.W. 13 does not know the owner of the property in which the shed was erected. He does not know any one who lives in the neighbourhood. He says that the building next to the election committee office is a tea-shop. But he does know not the shop keeper. He says that nobody asked him to take a picture of the office, but he went on his own all the way to take it. He tries to explain the deserted look of the place by saying that, being the election day, the people might have gone to the booth committee offices. Of all the election committee offices, this is the only photo that he has taken. The witness says that with black flags red flags also flew. However being a black and white photo the red flags are not easily indentifiable. P. W. 13 owns the "Shiny Studio" in which he has invested about Rs. 20,000. Two of his brothers worked for the petitioner a year earlier. One of them is about to go to Persia. The other is unemployed. He denies the suggestion that he is a member of the League. It is most unlikely that this witness whose two brothers had been employed by the petitioner a year earlier, and one of whom is still unemployed. would have declined to support the petitioner if his support was solicited. P. Ws. 7, 8, 10, 11, 12 and 14 also speak of black flags flying on the L. D. F. office, their cars and other places, and black badges worn by the L. D. F. workers. All these persons are admittedly partisan witnesses. Their testimony does not add strength to the petitioner's case on this point. Nor am I impressed by the evidence of P. W. 13,

who, for the reasons I have stated, does not strengthen the case of the petitioner. Ext. P. 14 (a) contains a reference to black flags. However as I stated earlier, that is a letter written by P. W. 5 without any personal knowledge of what is stated therein. Black flags are referred to by him in his evidence in chief. But he says in the cross-examination,

"Chief ൽ പറയുന്നതൊന്നും എനിക്ക് Direct ൽ ആയി കിട്ടിയ Informationൽ നിന്നും പറഞ്ഞതല്ല. The petitioner's case is that on account of the black flags and black badges coupled with the publication of the false statement contained in Ext. P1., the electorate living in Thattamala and neighbouring places were prejudiced against the petitioner as a result of which he lost many votes which he would have otherwise gained. Significantly enough not a single question as regards the black flages and badges was put to the three police officers who testified on behalf of the petitioner. The petitioner has failed to prove the allegiations against the 1st respondent and his election agent regarding the black flags.

17. It is contended that the 1st respondent's workers went from house to house spreading the false news that Omana was murdered at the instance of the petitioner. The witnesses who have spoken to this are P Ws. 7, 8, and 11. Apart from the fact that these are admittedly partisan witnesses, none of them is shown to have any personal knowledge of what is deposed to. Their evidence has little value.

18. A meeting was held on 14-5-1982 at Thattamala junction According to the petitioner, the 1st respondent, his election agent Azees and others, including Omana's mother, spoke at that meeting. All of them referred to Omana's death and described it as a murder committed at the instance of the petitioner. They said that if the petitioner was elected they would see the begiuning of the rule of goondas in the constituency. The petitioner admittedly has no personal knowledge of the meeting. P. Ws. 6, 9, 10 and 11 speak to the meeting. P. Ws. 2, 3 and 4 who are police officers also speak to this meeting P. W. 6 claims to be the printer and publisher of a newspaper called "Ponramithrem", which is an evening publication. The witness went to the meeting when it started at about 7O' Clock. He says that Sreedharan, Nuruddeen Vydiar, Gourikutty (mother Omana), Azees (R. W. 3), Abdul Rasheed and others spoke. He says that he was told that Balachandran, Ayyappan Pillai, R. S. Unni (the 1st respondent) and others would also speak. But he did not wait for their speeches. He heard Azeez whom he knew personally. Azeez said that Younus Kunju (the petitioner) had Omana murdered by his goondas, and if such a person was returned in the election it would be a threat to the working class. The witness says that he reported the news in his paper dated 15-5-1982 which is marked as Ext. P5 (a) is the news item. He has in some detail referred to the speech of Azeez. The witness says that he employs six persons. He keeps his accounts of the wages paid to his employees in a diary which is a quarter deny size. He has no acquittance roll. He does not pay income-tax, although he says that he has a number of agents in various places and pays them 25%

commission. He keeps all his agency accounts in a 200 page note book. He says he sends copies of his paper to the District information Officer, Quilon, the Revenue Divisional Officer, Quilon, the Press Club, the Public Relations Director, Trivandrum, the Press Information Bureau, Trivandrum, the Registrar of Newspapers of India., and others. The 1st respondent (R.W. 2) says that he made enquiries at all these places whether they received copies of Pouramithram. But none of them stated that they received Pouramithram regularly. R.W. 1 who is the Information Officer at the Public Information Bureau, Government of India, Trivandrum, has proved Ext. R5 which is a register of newspapers received by his office in terms of Section 11 (b) of the Press and Registration of Books Act, 1867. This register is maintained by adeftei under R.W.1's personal directions. It is on the basis of the entries in this register that the witness prepares his monthly statements. This register (Ext. R5) shows that subsequent to April 1982, not a single copy of Pouramithram has been received by R.W.1's Office. P.W.6 admits that he derives little income from the newspapers and he manages to carry on because of his job works. At the same time he claims that he publishes 5000 copies of his papers Yet it is incredible that all his accounts are kept in a diary or a 200 page note book. The suggestion of the 1st respondent is that P.W. 6 does not publish his paper regularly and that it is only on certain days copies come out. According to the I respondent, Ext. P3 is one of those rare copies brought out by the witness specially to suit the interests of the petitioner. The petitioner has not chosen to adduce any independent evidence to show that Pouramithram is a regular publication and that it has regular subscribers who rely upon the news published by that paper. If it is true that P.W.6 brings out about 5,000 copies of the paper a day and that he has a number of agents in various places in the constituency, it would not be difficult for the petitioner to adduce evident to show that Pouramithram is a reliable newspaper. Yet no such evidence is one record. In the circumstances, R.W.1's statement that for the month of May 1982 and the subsequent months not a single copy of this paper has been received by his office assumes significance. Not to send a copy of the paper in terms of Section 11 (b) is punishable under Section 16 (b) of the Press and Registration of Books Act, 1867. The fact that, despite the penalty provided under the Act, the paper has not been received by the office of R.W.1 adds considerable weight to the I respondents suggestion that Pouramithram is not a regular newspaper. I am of the view that little value can be attached to the evidence of P.W. 6 who claims to have heard the speech of Azeez and reported the same in his newspaper (Ext. P.3).

19. P.W. 9 is chance witness. He says that he reached the place of meeting at Thattamala on the 14th at about 11 p.m. When the 1st respondent was speaking. His father was ill and therefore he went to his father's house which was about 25 k.m. away from his house. He returned from his father's house by bus and got off at that Thattamala which was

about 1½ k.m. from where he stayed. It is strange that a person. Who was returning from his father's house about 25 k.m. away, got off at Thattamala, which was a kilometre and half from his own residence, at such a late hour of the night merely because he found that the meeting was in progress. He has no case that he is politically connected or is a supporter of the 1st respondent. He is a bus owner. He would not have had any special interest in that meeting. It is therefor most unlikely that he would have not off at the place of the meeting so late at night. There is no evidence that he got off at Thattamala for any reason other than the meeting. There is also no evidence that the bus by which he came did not go straight to the place of his residence. The witness further says that he did not speak to anyone about that he heard at the meeting * 12 days before he gave evidence in his court he was approached by Hussain to testify on behalf of the petitioner. All though he has testified that the 1st respondent spoke at the meeting of the petitioners' responsibility for the death of Omana, little reliance can be placed upon the testimony of a chance witness like P.W 9. In this connection it is of interest to note that the witness (E. N. Chellappan) was note cited to speak to the meeting, but to other matters. It was indeed by chance that this chance witness was made to speak to the meeting.

20. Although P. W.9 saw the 1st respondent on his legs at 11 O' clock when he reached the place of the meeting, the testimony of P.W. 10 suggests that the meeting could not have lasted till 11 p. m. P.W. 10 is the owner of a private maket at Thattamala Junction. He says that no meeting could be held at that junction without his knowing it. He claims to be an independent person and did not work for the petitioner. He says that he was no even a sympathiser of the petitioner's cause. Yet when confronted, he admits that he was one of the polling agents of the petitioner. He says the meeting started at 7 p. m. Sreedharan presided over it. Both Azeez and R. S. Unni spoke imputing to the petitioner responsibility for the murder of Omana. Sreedharan did not speak at the beginning or at the end of the meeting. Omana's mother, Gouria spoke only for a short time. The others spoke for 10 to 15 minutes. About 7 or 8 persons spoke at the meeting. Assuming that each of them spoke for 15 minutes the total time taken for the meeting could not have exceeded two hours. It is likely that only 7 persons spoke among whom Omana's mother spoke for less than 10 minutes, and the others on the average spoke for about 10 or 12 minutes. The total time thus taken would have been less that two hours. At any rate the meeting which, according to P. Ws. 10 and 6, commenced at 7 p. m. could not have lasted beyond 9 p. m. If this evidence is accepted, the evidence of P. W. 6 who says that the 1st respondent had not commenced his speech when he left at about 9.30 p. m. or that P.W. 9 who saw the 1st respondent speaking at 11 p. m. or of P. W. 11 who says that the meeting was not over until 11 p. m., or that of P. W. 3, the Sub Inspector of Police, who says that the meeting lasted till 11.30 p. m. falls to the ground. The evidence of P. W. 10 thus clasher with the other evidence

*See A.I.R. S.C. 587.

on the point P. W. 11 is a partisan being an active worker of the U. D. F. He too speaks of the speeches made by Azeez and the 1st respondent attributing to the petitioner the responsiblity for the murder of Omana. For the reasons stated by me little value can be attached to the evidence of P. W. 6. The evidence of P. W. 9, who is a chance witness, or that of P. Ws. 10 and 11, who are partisan witnesses, is not any more acceptable. T. P. Rajagopal (P. W. 2) is a Circle Inspector of Police. He went to the place of meeting at about 6 p. m. He was present there till 10 p. m. He says that Omana's mother was one of the speakers. Rasheed and Azeez also spoke at the meeting. He does not know anybody else who spoke. All the speakers referred to the suspicions circumstances in which Oman died. But he did not hear the speeches fully. The significance of this evidence is that he refers to Azeez as one of the speakers, although he does not speak to the contents of his speech. The credibility of this witness is seriously disputed by the 1st respondent. P. W. 3 has produced Ext. R. 20 which is certified copy of the judgement dated 8-3-1981 of the sessions judge in session case No. 117/1981 which strong observations have been made against the role played by T. P. Rajagopal (The Circle Inspector of Police) who was P. W. 16 in that case. The Judge says:—

> "Therefore in my view this is a fit case where appropriate action has to be taken against P. W. 16........Otherwise indiscipline and the tendency to tamper with official documents and create false documents will set at naught the very purpose of having a police establishment."

I do not wish to commant on the observation of the learned Sessions judge regarding the Officer, particularly because the document was not put to him when he deposed in this court and he was no given an opportunity to explain whether he had taken steps to get the observation expinged or whether departmental action had been taken against him and he was ultimately exonerated of the charge. Whatever it be, the fact that an on servation has been made in a recent judgement cannot altogether be ignored in appreciating the evidence of this witness. The place was surcharged with enotion of a account of Omana's death. The people were agitated over the matter. That is why a protest meeting was held. Three police officers including P. W. 2 were on duty. If the chief election agent Azeez was one of the speakers it is most unlikely that P. W. 2 would have missed his speech especially when he was present there on duty. He says he did not hear the whole speech. He does not speak of the contents of Azeez's speech. None of the other police officers refers to Azeez's Neither P. W. 3 nor P. W. 4 speaks of Azeez. P.W. 3 says that he did not know who were the speakers P W. 4 went there to prepare a report on the basis of the local gossips The purpose of the report was only to take necessary steps to prevent any break down of law and order. He says there was no breach of the peace as a result of the timely steps taken by the police. But he does not refer to any speaker at the meeting. In the absence of any independent and reliable corroborating evidence, it would not be fair to conclude, merely on the basis of P.W. 2's evidence, that Azeez was present at the meeting. All

the other witnessers who have implicated Azeez are partisan witnesses. Assuming that P.W. 2's evidence is sufficient to conclude that Azeez was present at the meeting, it would still only mean that he was present at a condelence meeting and, unless the partisan evidence of P.Ws. 10 and 11 or the equally unreliable evidence of P.Ws. 6 and 9 is accepted, no corrupt practice can be ascribed to Azeez. In the circumstances the evidence of P.W. 2 does not advance the case of the petitioner on the point. The petitioner's counsel refers to Ext. P14(a) as a corroborating piece of documentary evidence. I have already stated that Ext. P 14(a) is based solely on hearsay information obtained by P.W. 5. For that reason alone Ext.P.14(a) has no value for the purpose of corroboration. Ext. P. 14(a) contains vague and incorrect statements. In the first place it says that the meeting was proposed to be held on 13-5-1982. Either that is a careless mistake or P.W. 5 refers to some other meeting. In the penultimate paragraph says:

> "The workers of the left Democratic Front even demolished one of our election officers near to the place of death. Even now they carry on these similar corrupt practices. They also obstruct our election work and attack the workers."

This statement does not find any support either in the election petition or in the evidence. Neither the petitioner nor his witnesses have referred to any such act on the part of any person. No one has spoken to the demolition of election officers near the "Place of death" or anywhere else or the attack on the petitioner's workers. If these grave allegations were correct, the petitioner and his witnesses would not have failed to highlight them. And yet they have not been mentioned in the election petition or spoken to by ant one of the witnesses, including P.W. 5. This shows that P.W. 5 cared little for the truth or accuracy of the statements made by him in Ext. P14(a). In the circumstances little value can be attached to the testimony of P.W. 5 or to his statement in Ext. P14(a). I would in this connection refer to the testimony of R.Ws. 2 and 3. They say most emphatically that neither of them participated in the meeting of the 14th May or made, or was responsible for, any statement of imputation against the personal conduct and character of the petitioner.

21. It is strange that the petitioner who has made serious allegations of corrupt practices has not made any earnest effort to prove them. The allegations of undue influence are no longer pressed for want of any evidence. The allegations against Sasidharan are also not pressed for the same reason. The allegations in relation to Sadasivan are, as I have shown above, not supported by any reliable evidence. It is a grave matter to make allegations of corrupt practices in relation to Government servants. He who decides to level such charges must not do so lightly. Yet that is what the petitioner appears to have done.

22. Serious allegations are made against the 1st respondent and his election agent in terms of sub-section (4) of section 123. If the allegations were true one would have expected the petitioner to make an earnest effort

to addnce independent evidence. His partisan witnesses admit that independent evilence was available. Yet he choose to relay upon his own snpporters and workers.

23. At the meeting held on 14-5-1982 three police officers were on duty. If the petitioner were to be believed, it was a large gathering where the speakers spoke with the aid of a loud speaker. R.W. 2 has been representing this constituency ever since 1967. He was a Minister in the previous Government, R.W. 3 was his election agent on two earlier occasions also. Those persons have considerable experienco in matters of election. It is most unlikely that they would have made the fatal mistake of making the speeches attribnted to them at such a pnblic meeting in the presence of such a large gathering including three police officers. They were well aware of the consequences of such folly.

24. The petitioner relies upon the areal testimony of his interested and partisan witnesses. Such evidence must be viewed with the greatest caution. As stated by the Supreme Court:

"..............Where the election petitioner seeks to prove charge by purely partisan evidence consisting of his workers, agents supporters and friends, the Court would have to approach the evidence with great care and caution, scrutiny and circumspection and would, as a matter of prudence though not as a rule of law, require coraoboration of such evidence form independent quarters, nnless the Court is fully satisfied that the evidence is so credit worthy and true, spetles and blemishless, cogent and consisent that no corroboration to lend further assurance is necessary."

(D. Venkata Reddy v. R. Sultan, A I.R. 1976 S.C. 1599-1604.)

"Oral testimony, therefore, will have to be jndged with the greatest care and as electoral victory cannot be allowed to be mullified by a mouthful of oral testimony without contemporaneous assurance of a reliable natnre from as independent source.........

An election dispute is not a private foud between one individnal and another. The whole constituency is intimately involved in such a dispute. Shaky and wavering oral testimony of a handful of witnesses cannot still the dominant voice of the majority of an electorate."

(emphasis supplied)

(Kanhaiyalal v, Mannalal—A.I.R. 1976 S.C. (1886)

(See also Rahim Khan, v. Khurshid Ahmed—
A. I. R. 1975 S. C. 250. D. Venkata Reddy v. R. Sultan—
A. I. R. 1976 S. C. 1599, Para 58; Laxmi Raman Acharya
v, Chandran Singh A.I.R. 1577 S.C. 587

25. The allegation of corrupt practice must be proved beyond reasonable doubt. The averments in the election petition are not supported by the metrial particulars. The petitioner was not present at the places of distribution of Ext. PI or at the place of meeting. His information is based solely upon what he was told by others and form what he read in Pouramithram, [Exts. P3 and P3(a)], to which he has not made any reference in the election petition. He has not stated in the petition against of the speeches made at the meeting. He has only made certain general allegations concerning the contents of what the various speakers are supposed to have said and seems to depend upon his witnesses to speak to the details. This shows that at the time of the preparation of his petition, the petitioner had no knowledge of the exact words spoken to by the speakers. The evidence addnced by the petitioner does not disclose that any one of his supporters, who claim to have heard the speeches, kept written notes of what the speakers said. Even PW. 6 who reported the speech in his paper does not say that he has kept a manuscript of the speech. His report is stated to be a modified and refined varsion of what he heard. Assuming that his snpporters told him the truth, the petitioner did not in any case have the benefit of seeing the transcript of the speeches when he prepared his election petition. The allegations are natnrally therefore vague. Snch allegations gain little support from the oral testimony of interested witnesses who claim to relay upon their memory rather than any contemperaneous record of what they heard. (See the principles stated by the Supreme Conrt in K. M. Mani v. P. J. Antony (A. I. R. 1979 S. C. 1234). Neither Ext. P3 (a), which has appeard in an uncertain paper whose reputation and standing have not been established and of which no judicial notice, in the circumstances, can be taken, nor Ext. P 14 (a), hased on the heresay information of its writer, can be regarded as a contemporaneous record of the alleged incidents. The allegation of corrupt practice mnst be proved beyond reasonable donbt. The evidence of P.W. 1 has little value for he relises entirely on what he has been told by others. The evidence of the other witnesses who support him, is so artificial, improbable and highly biased that no reliance can be placed on what they say. As stated by the Suprome Court:

> "A charge, of electoral corrupt practices being of a quasi-criminal charactor, the on as on an election petitioner is heavy as if in a criminal charge. The allegations must he establihed beyond reasonable doubt to the satisfaction of the court by cogent and unimpeachable evidence."
>
> "Kanhaiyalal v. Mannalal—A.I.R. 1976 S. C. 1886 para 20).
> See also: A. I. R. 1981 S.C. 8 para 16; A.I.R. 1978 S. C. 1162 and A. I. R. 1975 S. C. 290).

In the circumstances the petitoner has failed to provo that either the 1st respondent or his election agent or any other person with the consent of either of them has committed any corrupt practice. Nor has he proved that any other agent of the 1st respondent has committed any corrupt practice. Accordingly Issue No. 1 is found against the petitioner.

26. *Issue Nos.* 2, 3 *and* 4.—It is alleged that there has been non-compliance with the provisions of the law on the part of the Returning Officer and other counting officers as a result of which considerable prejudice has been caused to the petitioner. It is stated that the petitioner was not intimated of the route through which ballot boxes were transported or the plave where the boxes were kept prior to the commencement of counting on 20-5-1982. The only persons who has spoken to this aspect of the case is the chief election agent of the petitioner (P.W. 14). He is not in a position to deny the averment in the written statement that the necessary information concerning the transmission of the boxes and the place where they were kept had been duly notified on the notice board at the distributing centre. He however says that he has no knowledge of such notice. The Returning Officer has not been examined, although he was cited as a witness. The petitioner took no steps to have him summoned. In the absence of the Returning Officer and in view of the fact that P. W. 14 is not in a position to deny the 1st respondent's specific averment that the necessary details had been notified on the notice board, and in the light of the evidence of R. W. 2 to that effect I see no substance in this contention. It is contened that irregularities and manipulations had occurred during counting as a result of which the result of the election in so far as it concerns the returned candidate has been materially affected. It is stated that the ballot boxes were seen in the counting hall with their seals broken. In the absence of the Returning Officer or any other officer conocted with the counting, the petitioner relies solely upon the testimony of his election agent (P. W. 14) to support this extremely grave charge. The petitioner himself has no personal knowledge at all and his evidence on the point has no value. The petition is silent as to the material particulars, such as the number of the boxes which had their seals broken, the polling stations from which they came, the time at which and the persons by whom the tampering had been noticed, and the tables on which they were seen. Nor does P. W. 14 mention these details. He does not also say whether he requested tho Returning Officer to comply with the provisions of Rule 55 and whether such request has been turned down by the Officer. All that he says is:—

"പെട്ടി വോട്ട് എണ്ണുന്നതിന് മുമ്പ് പരിശോധിച്ചപ്പോൾ പലതിലും സീലുകൾ ഇളകിയതായിരുന്നു. ഞാൻ കൊടുത്ത റീകൗണ്ട് പെറ്റിഷനിൽ ഈ പരാതി പറഞ്ഞിട്ടുണ്ടായിരുന്നു."

There is no reference to that question in his application for re-count (Ext. P. 12), although it is mentioned in Ext. P. 13. In cross-examination he says that he got the information from his agents. One of them was Chanda Pillai who was the agent at table No. 2. The other was one Azeez. Neither of them has been examined. P. W. 14 has not stated at which table Azeez sat. He does not say whether all those boxes were kept on table No. 2 or how many boxes were seen without the seals. He does not remember the polling stations from which these

boxes came. He did not think that these matters were of any importance to be specially noted. This is indeed a very casual and light manner of dealing with a grave allegation. This, I think, is reflective of an attitude of total lack of responsibility on the part of the petitioner and his election agent in dealing with grave allegations implicating responsible persons. It is contended that boxes which came from polling stations which were strongholds of the petitioner were directed to tables in charge of officers who were biased in favour of the 1st respondent. P. W. 14 speaks to this matter without giving any details. He does not speak to the names of or numbers of those polling stations or the names of the biased officers or the numbers of their tables or the source of his information regarding their bias. All he says is that the officers belonged to the N. G. O. Union and were, therefore, biased against the petitioner. Apart from K. V. Rajendran, who was one of the counting supervisors, there is no evidence that any one of the counting officers belonged to the N. G. O. Union. There is also no evidence that Rajendran or any other counting officer acted irregularly or to the prejudice of the petitioner. The mere fact that a person belongs to the N. G. O. Union does not mean that he acted irregularly or to the prejudice of a particular candidate. There is no evidence whatsoever that any one of the counting officers acted irregularly or injuriously to the petitioner. It is possible that some or many of the counting officers belonged to one or other of the unions catering to the interests of the non-gazetted officers. It is also possible that all or some of the unions are politically affiliated. The mere fact of such affiliation is no indication that the officers acted irregularly. Political affiliation and unionisation of employees are facts of life. It requires clear evidence to attribute to them irregular conduct or biased behaviour.

27. It is alleged that the ballot papers were improperly bundled as a result of which the bundles of the petitioner contained more than 50 votes and those of the 1st respondent contained less than 50 votes. There is no evidence to support this contention, apart from the bald statement of P. W. 14. He does not say how many votes were seen in the petitioner's bundles or in the 1st respondent's bundles. He does not refer to the tables at which the bundles were seen irregularly tied up. Nor does he say from which polling stations the ballot papers in question came or the time at which the irregularity was noticed. The names of the agents who noticed the irregularity are not mentioned in the petition. They are not examined. In the petition it is stated that at table Nos. 2, 4, 11, 16 and 20 the petitioner's agents asked to verification of the bundles, but the request was turned down. It is further stated that when the agents insisted, that the bundles should be verified, they were threatened with expulsion and imprisonment. This, again, is a grave charge. Nevertheless the petitioner has not chosen to examine the concerned counting officers of the Returning Officer or the counting agents themselves. P. W. 14 speaks of it rather lightly. He has not spoken to the details, nor does he refer to any threat

administered by the counting officers. In fact he admits that until he asked for a re-count the Returning Officer behaved very courteously. But he does not say in what manner the officer changed his attitude when the re-count application was presented, except to say that he was allowed only 5 minutes to prepare the re-count application. He, however, admits that he made before the Returning Officer an oral statement (Ext. P13.) after he filed the re-count application (Ext.P12) He admits that he had no difficulty in saying Ext. (13) whatever he wanted to say. Ext. P 12 is a fairly lengthy statement of the grounds for re-count. On the face of it it would appear that P. W. 14 took more than 5 minutes to prepare it. In the circumstances, I do not believe that the Returning Officer allowed the witness only 5 minutes to submit his written application for re count. P. W. 14 says that because the ballot papers were counted like currency notes it was difficult for his counting agents to keep watch over what the counting officers did. There is no evidence that the ballot papers were wrongly sorted or mistakes had been made in counting. There is no evidence whatever to show that the petitioner has lost any vote as a result of irregularities or mistakes committed by the counting staff. P. W. 14 suggests that the 1st respondents bundles contained votes polled in favour of independent candidates. There is no evidence whatever to support this bold statement. P. W. 14 himself does not give any details. At which tables were such irregularities noticed; who noticed them; from which polling stations the votes came ; these are all matters which have not been disclosed. The wild allegation that the petitioner lost to the 1st respondent more than 3000 votes on account of the irregularities and mistakes in counting is not supported by any evidence. Ext. P12 is as vague as the petition itself. Although various grounds, such as irregularities in the counting, the partiality of the counting supervisors and discrepancy of votes are stated—all of which P.W. 14 knew or ought to have known if the allegations were true—the essential details do not find a place in Ext. P12. There is no mention of Tampering with the seals of the ballot boxes. Although P.W. 14 has referred to it in Ext. P. 13., he does not give the relevant particulars. All that he says in Ext. P.13 on the point is:—

'ബോക്സ് ക്ലോസ് ചെയ്യുന്ന സന്ദർഭത്തിൽ പോളിംഗ് ഏജന്റുമാരെ
കൊണ്ട് ഒപ്പിടീച്ചു എന്നുള്ളത് പൊട്ടിച്ച സന്ദർഭത്തിൽ പരിശോധിച്ചപ്പോൾ
മാററമുണ്ടായിരുന്നത് കൗണ്ടിംഗ് സൂപ്പർവൈസർമാരെ ചൂണ്ടി കാണിച്ചു
വെങ്കിലും അവർ അത് അംഗീകരിച്ചില്ല'

It is not stated that he brought this fact to the notice of the Returning officer. Ext. P13 does not refer to the polling stations from which the boxes came ; the number of boxes on which the seals were seen to have been tampered with ; the counting supervisours to whom complaints were made ; the names of the petitioner's agents who made the complaint, and other relevant particulars. P.W. 14 does not as stated above, mention these facts in his testimony before this Court also. The election petition itself is totally silent on these aspects. Apart from the interested testimony of P. W. 14, there is no evidence as regards the allegation that rendom checking was not done by the Returning Officer of that the postal ballot papers were not counted

before the other ballot papers were nat counted, before the othee ballot papers weee counted. As regards the alleged discrepancy between the statements in Foern 16 Part I and the actual count of votes, it is not disputed by the petitionee that whatevee be he actual differeence it did not exceed 5 votes. Such difference, if any, does not make any differeence to the result of the election, consideeing the actual difference of votes between the petitioner and the Ist eespondent. On the basis of the allegations contained in Exts. P12 and P13 and aftee taking them into account, the Retueuing Officee made detailed ordee (Ext.P9) dated 20-5-1982 eejecting the petitionee's request foe re-count. He says that the Chief election agent, Shanavas Khan (P W.14) was present throughout the counting He was sitting on the platform by the side of the Returning Officee. At no time had P.W.14 raised any complaint eithee in weiting oe oeally as regaeds the counting. The Returning Officer says that the allegations aee vague and they aee not sustainable. I have no doubt that it was on a propee application of the mind to the relevant questions that the Returning Officer came to the conclusion that the request foe re-count was unsustainable. I am not satisfied that there is any justification in saying that the Returning Officer did not give a peopee oppoetunity to the petitioner's election agent to submit his written application foe ee-count. The petitioner has chosen to eely solely upon the testimony of his election agent to substantiate his allegation of irregulaeity in counting. In the absence of the Returning Officer and the othee counting officers to speake to these mattees and in the absence of any independent evidence to corroboeate the inteeested testimony of P. W. 14, the petitionee has failed to establish the alleged ireegularities and manipulations in counting. Noe has he proved that the Retueuing Officer oe the counting staff failed to comply with the peovisions of the law. The allegations or irregulaeity oe malpractiee oe non-compliance with the law are denied by R. W.s. 2 and 3. R. W. 2 says that he went out of the room when the Retueuing Officer made Ext. P9. He eeturned only when the ordee was being eead out. I see no substance in the contention that Rule 54A of the Conduct of Election Rules has been in any mannee violated.

28. I am not prima facie satisfied that, in ordee to decide the dispute and to do complete Justice between the parties, a ee-count of the ballot papers is called foe. I would not, therefore, be Justified in acceding to the eequest foe a ee-count of the votes which, in my view, is nothing short of an attempt to embark on a coving enquiry in seaech of mateeials to get an election declared to be void (See the peiciples stated by the Supeeme Court in *S. Raghbir Singh Gill V. S. Gurcharan Singh Tohra*—A I. R. 1980 S. C. 1362 1375 and the other cases cited theeein). in the cieeumstances. Issues 2,3 and 4 aee found agaist the petitionee.

29. *Issue No.* 5—None of the allegations contained in the election petition has been proved. The petition contains geave allegations such as oorrupt peactices within the meaning of sub-sections (2), (4) and (7) of Section 123 and irregulaeities and manipulations in counting. But the

petitioner has not made any earnest or serious attempt to prove any one of them. In the circumstances, the petitioner is not entitled to any relief in this election petition. It is accordingly dismissed with costs.

30. *Issue No.* 6—The petitioner shall pay to the 1st respondent a sum of Rs. 2,000 as his costs, towards which the amount deposited by the petitioner in this Court shall be adjusted.

31. The Registrar shall immediately intimate the substance of this decision to the Election Commission and the speaker of the Kerala Legislative Assembly and shall thereafter send as urgently as possible an authenticated copy of this judgment to the Election Commission, as required under Section 103 of the Representation of the People Act, 1951.

7th December, 1982.

(Sd.)
T. Kochu Thommen,
Judge.

Petitioner's Exhibits:—

P1	13-5-1982	Pamphlet printed in Malayalam published by L.D.F., Mayyanad Panchayat.
P1(a)	do.	Annexure A of the Election Petition
P2		Flash Phote
P2(a)		Negative file of do.
P3	13-5-1982	'Pauramithram' daily
P3(a)	do.	News items in do.
P5	14-5-1982	'Malayala Manorama' daily
P5(a)	do.	News item in do.
P6	3-5-198:	Copy of order No. A5-32706/82 of the Collectorate, Quilon.
P7		Ballot papers Account of P. S. No. 52
P7(a)		do. of P. S. No. 66
P7(b)		do. of P. S. No. 96
P7(c)		do. of P. S. No. 110
P8	20-5-1982	Copy of Final Result sheet of Eravipuram Constituency.
P9	20-5-1982	Copy of proceedings of the Returning Officer, 125 Eravipuram L. A. Constituency.
P10	14-5-1982	District Special Branch report (Political).
P10(a)	14-5-1982	First paragraph of do.
P11	17-5-1982	A/D slip of Registered letter addressed to Chief Election Commissioner of India.
P12	20-5-1982	Copy of application for recount.
P13		Copy of petition filed by A. Shanawaz Khan
P14	19-5-1982	Copy of letter No.61/KL/82 Vol. II of the Secretariat, Election Commission of India, addressed to the Chief Electoral Officer, Trivandrum.

P14(a)	17-5-1982	Photostat copy of letter sent to Chief Election Commission in the Chairman, U. D. F. Central Committee, Quilon.
P14(b)		Photostat of Pamphlet published by L. D. F.
P15	17-5-82	Letter sent by Chairman U.D.F., Central Committee to the Chief Election Commission of India.
P16		Pamphlet published by U.T.U.C. C.I.T.U. AITUC (cashew workers committee.)

Respondents Exhibits':

R1		Regisier of News Papers kept in the Press Information Bureau, Trivandrum for the month of May 1982.
R1 (a)		Page 49 of do.
R2		Register of PIB, Trivandrum for the month of April 1982
R2 (a)		Page 43 of do.
R3		Rgister of PIB, Trivandrum for the month of June, 1982.
R3 (a)		Page 48 of do.
R4		Register of PIB, Trivandrum for the month of March 1982.
R4 (a)		Page 46 of do.
R5		Register of PIB, Trivandrum for July, 1982.
R5 (a)		Page 42 of do.
R6		Register of PIB for the month February, 1982.
R6 (a)		Page 44 of do.
R7		Register of PIB, Trivandrum for the month of January, 1982.
R7 (a)		Page 42 of do.
R8		Register of PIB, Trivandrum for August 1982
R8 (a)		Page 38 of do.
R9	14-5-1982	Pamphlet published by A. A. Aziz, Election Agent L.D.F.
R9(a)	do.	English translation of do.
R10	do.	Copy of letter sent by A. A. Aziz, to the District Election Officer, Quilon.
R10 (a)		English Translation of do.
R11		Copy of statement titled "statement in authorised"
R12		Copy of notice published by A. A. Aziz.
R12 (a)		Copy of notice (at page 24 of the Election Petition.)
R13	2-8-1982	Copy of letter No. A6-60251/82 of Collectorate, Quilon.
R14	22-4-1982	Copy of nomination paper submitted M. C. M Khan.
R14 (a)	do.	English translation of do.
R15		Copy of oath (in form No. 8) by M. C. M. Khan
R15 (a)		English Translation of do.

R16	18-5-1982	Copy of appointment of P. Sasidharan Pillai, as Election Agent of A. A. Aliyar Kunju.
R17	do.	Copy of appointment of Sri A. Pareethkunju as Election agent of K. Purushothaman
R18	Nil	Copy of appointment of counting Agents of R. Mohamed Hussain.
R19	18-5-1982	Copy of appointment of Election Agent of R. Mohammed Hussain.
R20	9-3-1982	C. C. of judgment in Session Case No. 117/81 of the Session Court, Quilon.
R20 (a)	do.	Page 23 of do.
R20(b)	do.	Page 24 of do.
R20 (c)	do.	Page 30 of do.

Petitioner's Witnesses:

1. Haji A. Yunus Kunju
2. Sri T. P. Rajagopalan
3. Sri P. Sathiadas
4. Sri A. Ahammed Kunju
5. Sri K. Bhaskaran Nair
6. Sri John Cheriyan
7. Sri K. Ramachandran Pillai
8. Sri K. Sreekantan Nair
9. Sri E. N. Chellappan
10. Sri M. Shahul Hammed
11. Sri S. Vipina Chandran
12. Sri M. Baby
13. Sri E. Abdul Khader
14. Sri A. Shanavaz Khan
15. Sri P. C. Jose
16. Sri Joseph, T.

Respondents Witnesses

1. Sri Rosscot Krishna Pillai
2. Sri R. S. Unni
3. Sri A. A. Aziz

Costs to the respondent Rs. 2,000

By order,

(Sd.)

T. D. Gupta,

For *Under Secretary to the Election Commission of India.*